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09/903,284	07/11/2001	Ellen Barbara	CITI0230	9290
75127                      7590                      11/19/2010 KING & SPALDING LLP (CITI CUSTOMER NUMBER) ATTN: Eric Sophir 1700 PENNSYLVANIA AVENUE, NW SUITE 200 WASHINGTON, DC 20006				
EXAMINER				
OYEBISI, OJO O				
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
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8 *Ex parte* ELLEN BARBARA and  
9 ANTONY JENKINS  
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12 Appeal 2009-006566  
13 Application 09/903,284  
14 Technology Center 3600  
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17 Before HUBERT C. LORIN, ANTON W. FETTING, and  
18 JOSEPH A. FISCHETTI, *Administrative Patent Judges*.  
19 FETTING, *Administrative Patent Judge*.

20 DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Ellen Barbara and Antony Jenkins (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-11, 17-44, and 50-72, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION<sup>2</sup>

We AFFIRM.

THE INVENTION

The Appellants invented a way of making on-line payments using a transaction account as a hub for such payments. (Specification 1:19-21).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

1. A method for making on-line payments, comprising:

[1] receiving enrollment information from a user for an on-line payments service;

[2] receiving the user's designation of a source account for withdrawing funds for the on- line payments;

[3] providing a transaction account for the user as a money deposit account accessible via a single account number that the

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<sup>2</sup> Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed March 6, 2008) and the Examiner's Answer ("Ans.," mailed May 28, 2008).

1 user can use both as a source from which to send funds and a  
2 destination into which to receive funds and with at least one of  
3 a plurality of service levels;

4 [4] wherein providing the transaction account for the user with  
5 at least one of the plurality of service levels further comprises

6 [4.1] providing the transaction account for the user with a  
7 first level service that includes an on-line person-to-  
8 person payment service enabling the user to receive and  
9 send funds from the user's transaction account, with a  
10 save for later feature enabling the user to accumulate a  
11 balance of funds in the user's transaction account for later  
12 use, and with a held money feature for retaining funds in  
13 the user's transaction account which the user has  
14 designated to be sent to a recipient but which has not yet  
15 been picked up by the recipient;

16 [4.2] providing the transaction account for the user with a  
17 second level of service that includes all features of the  
18 first level of service plus an access card enabling the user  
19 to access funds in the user's transaction account for off-  
20 line transactions; and

21 [4.3] providing the transaction account for the user with a  
22 third level of service that includes all features of the first  
23 and second levels of service plus a credit line enabling  
24 the user to access both line of credit funds and  
25 accumulated balance funds in the user's transaction  
26 account;

27 [5] allowing the user to have funds reside in the transaction  
28 account; and

29 [6] allowing the user to use the funds residing in the transaction  
30 account for at least one of

31 making an on-line payment with funds in the transaction  
32 account,

33 making an online purchase with funds in the transaction  
34 account,

35 making an off-line purchase with funds in the transaction  
36 account,

1 making a cash withdrawal with funds in the transaction  
2 account,  
3 making a credit card account payment with funds in the  
4 transaction account,  
5 making a bill payment with funds in the transaction  
6 account, and  
7 making an international payment with funds in the  
8 transaction account.

9 THE REJECTION

10 The Examiner relies upon the following prior art:

O'Leary US 6,609,113 B1 Aug. 19, 2003

11 Claims 1-11, 17-44, and 50-72 stand rejected under 35 U.S.C. § 103(a)  
12 as unpatentable over O'Leary.

13 ISSUES

14 The Appellants' arguments are that (1) O'Leary does not enable the user  
15 to receive and send funds from the user's transaction account (Appeal Br. 7 –  
16 see limitation [4.1]); (2) it was not inherent for O'Leary to retain funds in the  
17 user's transaction account which the user has designated to be sent to a  
18 recipient but which has not yet been picked up by the recipient (Appeal Br.  
19 7-8; see limitation 4.1]; and that the Examiner improperly took notice of the  
20 use of lines of credit (Appeal Br. 8-9 – see limitation 4.3].

21 The issues are then whether O'Leary has a transaction account that  
22 enables sending and receiving of funds, and whether it was predictable for  
23 O'Leary's transaction account to retain funds and be associated with a line  
24 of credit account.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

*Facts Related to the Prior Art – O’Leary*

01. O’Leary is directed to electronic commerce in which a payor pushes electronic credits to a payee with Electronics Funds Transfer (EFT). O’Leary 1:16-20.

02. O’Leary uses an Internet Pay Anyone (IPA) account that is used to send (push) funds to any other accounts through the EFT network. O’Leary 4:55-65.

03. O’Leary’s user is able to fund the IPA account from its normal checking or savings accounts, consumer’s Line of Credit, or credit, or debit card account held by the bank or any other account from which the consumer can transfer funds (*e.g.*, another DDA account or credit card account at another financial institution). O’Leary 11:62-12:3.

ANALYSIS

The Appellants argue that O’Leary’s Internet Pay Anyone (IPA) account can only dispense funds, not receive them. The Examiner correctly responds that O’Leary’s IPA account receives funds to fund the account. Answer 20. FF 03. The question of O’Leary’s IPA account sending funds is not at issue and is supported by the facts. Answer 19 and FF 02. The Appellants are apparently contending that O’Leary’s IPA account cannot receive funds from parties other than the user, but this is not commensurate with the scope

1 of the claim, as limitation [4.1] recites “enabling the user to receive and send  
2 funds from the user’s transaction account” without specifying the party on  
3 the other side of the send or receive operation.

4 The second argument regards whether funds, once posted to an account,  
5 necessarily accumulate in the account. The Examiner essentially found this  
6 is an inherent feature of accounting. Answer 20. That is, when funds are  
7 posted in an accounting transaction, the necessity of keeping the books in  
8 balance necessitates that those funds be left there until there is a clearing  
9 transaction. We must agree, as this is a feature of basic bookkeeping and  
10 accounting, for centuries. The Appellants appear to take issue with the  
11 necessity of this feature (Appeal Br. 7-8), but do not explain why this basic  
12 feature of bookkeeping would be violated. Even if there were an example of  
13 its violation, such as a feature of funds accumulation, it would at least be  
14 predictable to one of ordinary skill in the financial arts.

15 The third argument is that the Examiner did not provide evidence that  
16 the use of credit lines tied to accounts was notoriously well known. (Appeal  
17 Br. 8-10). As O’Leary provides evidence of this notoriety (FF 03), we find  
18 this argument unpersuasive. Certainly the Appellants provide no reason to  
19 doubt the notoriety of this finding of fact by the Examiner. Consequently,  
20 we adopt this finding as well, as it is properly evidenced by O’Leary.

## 21 CONCLUSIONS OF LAW

22 The Examiner did not err in rejecting claims 1-11, 17-44, and 50-72  
23 under 35 U.S.C. § 103(a) as unpatentable over O’Leary.

DECISION

The rejection of claims 1-11, 17-44, and 50-72 under 35 U.S.C. § 103(a) as unpatentable over O'Leary is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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